IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1510 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NATUBHAI RANGJIBHAI NAYKA

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 1510 of 2004

MR ANIL S DAVE for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MS AC RAVAL, AGP for Respondent No. 1,3

RULE SERVED for Respondent No. 1,2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/07/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu

has challenged his detention order dated 07-01-2004, by which he is detained under P.A.S.A. as a "bootlegger". Along with the said order, the petitioner is served with the grounds of detention. In the grounds of detention, there is a reference about five criminal cases registered against the petitioner. All these cases are registered under the Bombay Prohibition Act. It is alleged against the petitioner that he is dealing in foreign liquor. After considering the aforesaid cases and statements of two witnesses, the detaining authority has passed the order of detention, which is impugned in this matter.

2) Mr.Dave, learned advocate for the petitioner submitted that the last incident registered against the petitioner is of 13-11-2003, and after a considerable time of about one and a half month the order of detention was passed on 07-01-2004. He submitted that when there are registered cases against the petitioner, it is not necessary to wait for such a long time for passing the order of detention, therefore, the order of detention is required to be set aside on the ground of delay in passing the same. He further submitted that, only in order to see that the detenu remain behind the bars, the detaining authority has passed the order of detention when the petitioner was released on bail.

3) To substantiate his say that there is a delay in passing the order of detention, Mr.Dave has relied upon the decision of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City & Others reported in 1997 (1) G.L.H. 381 wherein this Court has observed in Para 21 as under:-

> "21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appeared to be some substance in the contention of the petitioner that these

> two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S.Ramamurthy reported in 1993(2) Suppli. SCC 61."

4) Ms.Archana Raval, learned AGP has submitted that after the last incident, statement of witnesses have been recorded and, therefore, there is no delay in passing the order of detention.

5) Considering the fact that cases were registered against the petitioner, it was not necessary for the authority to wait for such a long time in passing the order of detention. Even otherwise, after recording the statements of witnesses, there is a delay of about 28 days in passing the order of detention. This delay is also not satisfactorily explained. Even delay in passing the order of detention is not explained properly. Therefore, considering the delay in passing the order of detention and considering the judgement referred above, this petition is required to be allowed.

6) At this stage, Mr.Dave, learned advocate for the petitioner has voluntarily made a statement that, except for attending criminal cases the petitioner will not enter Gandevi town upto 30th September, 2004. This voluntary statement is recorded. In view of this statement, the police authority is directed to monitor whether the petitioner is entering Gandevi town or not.

7) For the foregoing reasons, this petition is allowed. The order of detention dated 07-01-2004 is quashed and set aside. The detenu, Natubhai Rangjibhai Nayka is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar,J.)
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